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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,090	07/05/2001	Robert B. Beelman	95-1514	3531

7590

09/27/2002

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EXAMINER

BHAT, NINA NMN

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TCS

Office Action Summary

Application No.

09/899,090

Applicant(s)

BEELMAN ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 16, 18, 20, 22-25 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 1-8, 12, 15, 17, 19, 21, 26-29 and 33-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

1. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

2. Claims 1-37 are rejected under 35 U.S.C. 251 as being based upon a defective oath.

3. The Ribbon copy of the Patent has been received.

4. The IDS submitted by applicants has been reviewed and acknowledged.

5. Applicant's oath has been reviewed for compliance under Re-issue guidelines and the oath has stated that the specification is attached hereto. Applicant verily believes that the original patent to be wholly or partly inoperative or invalidated for the reasons that the patentee claimed more or less than he had the right to claim in the patent. Applicant states that at least one error upon which the reissue is based is described as a broadening re-issue wherein applicant's attorney failed to appreciate the full scope of applicants' invention. The invention is described and enabled in the specification and not limited to using erythorbic acid/sodium erythorbate buffer solutions to return the final mushroom pH to the physiological range of approximately 6.5. As described in the specification acidulants and even water alone were used to neutralize the effects of exposure to high pH antimicrobial solutions in the first stage. Applicant has acknowledged that all errors corrected in this reissue application arose without any deceptive intention on the part of applicant.

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6. The re-issue application is a broadening re-issue filed within the two-year statutory period. There are no recapture issues in this application.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 9-11, 16, 18, 20, 22-25 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murch et al. '654

Murch et al. disclose the invention substantially as claimed.

Murch et al. teach a cleaning composition which includes toxicologically acceptable ingredients for cleaning fruits and vegetables. The fruits and vegetables are sprayed with a solution which ^{has a} ~~is solution at a~~ basic pH comprising 0.1-15% of a sodium or potassium oleate, optionally a nonionic surface, 0.2-4% by weight of polycarboxylic acid salt, and 0.3-5% of orthophosphoric acid. The balance being an aqueous carrier comprising water or water and ethanol. The composition further includes potassium and/or sodium, carbonate and/or bicarbonate ^{buffer} ~~buffer~~ and has a pH of 9.5 or greater,

preferably 11.5-12.3. The composition can be sprayed on fruits and vegetables to clean and disinfect the fruit. [Note Column 5, lines 18-50 and Column 6, lines 10-15]

However, Murch et al. does not teach specifically that the composition is for cleaning mushrooms.

Murch et al. does teach that the cleaning solution is for cleaning vegetables and fruits, the pH of the cleaning solution is greater than 9.5 and can include option adjunct material such as pH adjusting agents, perfumes, essences and preservatives. Murch et al. teaches that the composition having a pH of 9.5 or greater reduces the tendency for biological growth of contaminants such as bacterial, fungi or molds. Murch et al. teaches that EDTA can be used as an adjunct or preservative of the cleaning material but is not required.[Note column 9, lines 45-55]. Murch et al. does teach that once subjecting the vegetables or fruits to the cleaning solution the product is then cleaned, rubbed, rinsed and/or wiped off with a suitable clean material. Murch teaches that the composition can be diluted and can be used wherein the fruit or vegetable is sprayed with the cleaning composition and followed by rinsing in tap water.

It would have been obvious from the teachings of Murch to provide a cleaning solution, which is applicable to mushrooms, which is a basic solution for cleaning the mushroom. Murch teaches that after contacting or washing fruits or vegetables with the basic cleaning composition, the vegetable or fruit can be rinsed off with tap water prior to consumption. To use the cleaning solution and apply this solution for cleaning mushrooms where there is a generic teaching of cleaning vegetables followed by rinsing

the mushrooms in tap water renders applicant's invention obvious as a whole to one having ordinary skill in the art at the time the invention was made.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Twinam teaches a fresh vegetable product, which provides improved shelf life, which includes sodium acid pyrophosphate, calcium chloride, citric acid, potassium sorbate and L-ascorbic acid. Spencer et al. teaches a method of disinfecting vegetables by processing the vegetables with an aqueous carbonate solution. Simpukas teach methods and composition for producing fruits or vegetables having extended shelf life. Bautista et al. teach a method for sterilizing produce with an aqueous solution of hydrogen peroxide. Talley teaches an apparatus and method of preserving fruits and vegetables by introducing an antimicrobial agent and/or molecular oxygen to the bed of fruits or vegetables. Nayyar et al. teach a method of infusing vegetables with an infusion antimicrobial cocktail followed by drying the vegetable to remove excess antimicrobial infusion cocktail. Smith et al. teach cold water disinfection of foods using cold ozonated water.

11. Claims 1-8, 12, 15, 17, 19, 21 and 26-29 and 33-37 are ^{object} ~~objected~~ to but are deemed free of the prior art of record and would be allowable upon submission of a proper oath.

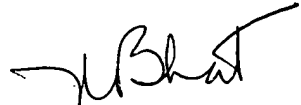
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

A handwritten signature in black ink, appearing to read 'N. Bhat', with a stylized flourish extending from the end.

N. Bhat
Primary Examiner
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September 23, 2002